

**FAIRFAX COUNTY PLANNING COMMISSION  
SCHOOL FACILITIES COMMITTEE  
WEDNESDAY, MARCH 23, 2005**

**COMMITTEE MEMBERS PRESENT:**

Walter A. Alcorn, At-Large  
John R. Byers, Mount Vernon District  
Frank A. de la Fe, Hunter Mill District  
Suzanne F. Harsel, Braddock District  
Rodney L. Lusk, Lee District  
Laurie Frost Wilson, At-Large

**COMMITTEE MEMBERS ABSENT:**

Ronald W. Koch, Sully District

**SCHOOL BOARD MEMBERS PRESENT:**

Cathy Belter, Springfield District  
Tessie Wilson, Braddock District

**OTHER PLANNING COMMISSION MEMBERS PRESENT:**

James R. Hart, At-Large

**OTHERS PRESENT:**

Gary Chevalier, Director, Office of Facilities Planning Services, Fairfax County Public Schools (FCPS)  
Dean Tistadt, Assistant Superintendent, Department of Facilities and Transportation Services, FCPS  
Karen Harwood, Esquire, Deputy County Attorney  
Barbara Byron, Director, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ)  
Donna McNeally, Assistant Division Director, Zoning Evaluation Division, (ZED), Department of Planning and Zoning (DPZ)  
Regina Murray, Branch Chief, Rezoning and Special Exception Branch, ZED, DPZ  
Kevin Guinaw, Branch Chief, Special Projects/Applications Management Branch, ZED, DPZ  
Barbara J. Lippa, Executive Director, Planning Commission Office  
Linda B. Rodeffer, Chief, Clerical Branch, Planning Commission Office  
Fran Wallingford, Mantua Citizens Association

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Planning Commission Vice-Chairman John R. Byers constituted the meeting at 7:30 p.m. in the Board Conference Room at 12000 Government Center Parkway, Fairfax, Virginia, pursuant to Section 4-102 of the Commission's *Bylaws & Procedures*, and indicated that the first order of business was to elect a committee chairman.

Commissioner de la Fe MOVED TO NOMINATE SUZANNE F. HARSEL AS CHAIRMAN OF THE 2005 SCHOOLS FACILITIES COMMITTEE.

The motion was seconded by Commissioner Byers and carried unanimously with Commissioner Koch absent from the meeting. Vice Chairman Byers then turned the chair over to Chairman Harsel.

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Chairman Harsel MOVED TO APPROVE SCHOOLS FACILITIES COMMITTEE MINUTES OF OCTOBER 20, 2004. Commissioner de la Fe seconded the motion which carried unanimously with Commissioner Koch absent from the meeting.

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Chairman Harsel requested input from the School Board members and staff about the policy for placing monopoles on school property at the next Schools Facilities Committee.

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Chairman Harsel stated that the first item on the agenda would be a discussion of sample school proffers after which Karen Harwood, Esquire, Deputy County Attorney, would brief the committee on two bills concerning the proffer system passed by the 2005 Session of the General Assembly.

Donna McNeally, Assistant Division Director, Zoning Evaluation Division, (ZED), Department of Planning and Zoning (DPZ), distributed "Sample Proffers" dated March 21, 2005, noting that the most recent revisions had been underlined. (A copy of the sample proffers is in the date file.) She pointed out that Proffer Number 1, Dedication of Land, stated that the applicant would, if voluntarily agreed to, dedicate a specific number of acres to the Board of Supervisors (BOS) at the time of the first building permit or at site/subdivision plan approval. She also said that sample proffer Number 2 stipulated that the proffered funds would go to the Department of Public Works and Environmental Services (DPWES), not the Board of Supervisors (BOS), for distribution to the Fairfax County School Board.

Responding to a question from Commissioner Byers about Proffer Number 2, Contributions to a Specific School for a Specific Improvement, Gary Chevalier, Director, Office Facilities Planning Services, Fairfax County Public Schools (FCPS), said that applicants could determine what "specific improvements" were needed by referencing the Capital Improvement Program (CIP) or contacting his office or the District School Board member. In response to another question from Commissioner Byers, Barbara Byron, ZED, DPZ, pointed out that the last sentence of this proffer stated that if the need for the proffered improvement was no longer required, other equivalent capital improvements could be substituted at the discretion of the School Board. Chairman Harsel encouraged Planning Commissioners to communicate with their District School Board members about specific needs.

Ms. Byron, in response to a question from Commissioner Byers, said Proffer Number 5, Cash Contributions to County Schools, explained that unallocated cash contributions would be directed to the Board of Supervisors, not DPWES, so that the Board could disburse the money for CIP projects during the budget process. Mr. Chevalier pointed out that the sample proffers had been developed to provide the most flexibility and to cover different situations, but said he hoped Proffer Number 5 would not be used very often. Chairman Harsel reiterated her recommendation that Planning Commissioners communicate with their District School Board members as well as their Supervisors about the best use of proffered funds.

Responding to a question from Commissioner Alcorn, Ms. McNeally said that "capital goods" in Proffer Number 3 would be changed to "capital facilities."

Ms. Byron pointed out that "building permit" would be stricken from Proffer Number 1 because the new law only pertained to cash contributions, which would be more fully explained by Ms. Harwood.

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Karen Harwood, Esquire, Deputy County Attorney, said two bills relating to proffers had been passed during the 2005 General Assembly session, both of which were expected to be signed by the Governor and become effective July 1, 2005. She said the first version of House Bill H2456 stipulated that no locality could request or receive a cash proffer prior to the issuance of a building permit which in practice would have meant that an applicant could not make a cash payment at the time of subdivision plat approval. She said the proposed bill had been changed to state, in line 10, that "no locality may require" payment of a cash proffer prior to the issuance of a building permit for construction on property subject to rezoning. She noted this provision only applied to cash proffers, not in-kind proffers such as building a road or dedicating land. She explained that an applicant could still proffer at anytime, but that payment could not be required before a building permit had been issued. For this reason, she stated, the County could not have an Ordinance saying that if a proffer was silent about when it would be paid, unless otherwise specified, it would be collected at the time of subdivision plat or site plan approval. Ms. Byron added that payment of cash proffers would always be required before bond release.

Mr. Chevalier said the impact of this requirement on school money would be that the proffered amount per unit would be paid at the time each home received a building permit and not upfront in a lump sum. Ms. Harwood agreed, but pointed out that an applicant could agree to something different. She noted that the reason this bill was very important to the home building industry was because some jurisdictions had been requiring payment upfront before building had begun when they did not have the cash to make the payments. She noted that this was a particular problem when building a small number of homes. She explained that language on lines 16-20 dealt with how a locality would index a proffer commitment to the rate of inflation on applications filed after July 1, 2005. Ms. Harwood strongly recommended that proffer statements specify when cash proffers would be paid and suggested that staff develop standard language for this purpose. (A copy of H 2456 is in the date file.)

Commissioner Wilson commented that the bill did not prevent a locality from asking for the money upfront, but that an applicant could refuse to pay it until a building permit had been issued.

Ms. Byron pointed out that this bill would require little, if any, change to the County's current practice except for the inflation index requirement.

Ms. Harwood explained that the second bill, H 2888, known as the "proffer forfeiture bill" originally stated that if construction had not begun within five years of payment on an improvement for which cash proffers had been paid, the money would be forfeited to the State Literary Fund. She pointed out that Fairfax County would not have received any of that money because it was too wealthy and the nearest locality eligible for those funds would have been the City of Manassas. She said, however, that the bill which was passed stated that if improvements had not been made within seven years, instead of five years, the money would be forfeited to the Commonwealth Transportation Board, not the Literary Fund, for expenditure within the County from which it had been received. She added that this time period had been extended even further because the seven years would not start until the last payment had been made.

Ms. Harwood said lines 40-53 of the bill contained a provision that regardless of the date of rezoning approval, money proffered for a specific purpose but not used could be designated for alternative improvements of the same category within the vicinity of the improvements for which the cash payments had been originally made. She noted that this could only be done after appropriate notice and a BOS public hearing. (A copy of H 2888 is in the date file.)

Responding to a question from Chairman Harsel, Ms. Byron suggested that the last school proffer be paid upon bond release so that the seven years would not begin to run until the final payment had been made. Ms. Byron pointed out that it might be more advantageous to encourage in-kind proffers instead of cash proffers so that the forfeiture provisions would not be triggered.

Ms. Harwood pointed out paragraph B. required that, beginning in FY 2007, the CIP had to specify the amount of money received from cash proffers during the last CIP cycle. In response to a question from Chairman Harsel, Ms. Harwood said DPWES would be responsible for tracking that money.

Responding to a question from Chairman Harsel, Ms. Harwood said that it would probably be in the best interests of the school system if proffers were as general as possible to provide the most flexibility, but pointed out that neighbors might not support an application unless they knew that school proffer money was going to be used in their area.

Giving an example of why flexibility was so important, Mr. Tisdadt said that while the Schools' CIP recognized the potential need for schools in the western part of the County, a specific school had not been identified, therefore, flexibility was needed so that if a piece of land became available it could be bought with cash proffers.

Responding to a question from Commissioner Wilson, Ms. Harwood said if money had been proffered for a specific school in a specific area, but money for the school was not in the CIP until years later, the proffered money could be subject to forfeiture. Ms. Tisdadt said the accounting of such money could be a nightmare. Ms. Byron noted that DPZ was working with DPWES to add a computer capability to track such funds.

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Chairman Harsel indicated that she would coordinate the next meeting with Schools' staff in the April/May timeframe to discuss the monopole issue.

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The meeting was adjourned at 8:21 p.m.  
Suzanne F. Harsel, Chairman

An audio recording of this meeting is available at the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Linda B. Rodeffer

Approved on: January 18, 2006

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Linda B. Rodeffer, Clerk